

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**STATE OF MISSOURI**

**v.  
UMAR MUHAMMAD**

**RESPONDENT,**

**APPELLANT.**

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DOCKET NUMBER WD76966

DATE: October 27, 2015

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Appeal From:

Jackson County Circuit Court  
The Honorable Peggy Stevens McGraw, Judge

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Appellate Judges:

Division One: Anthony Rex Gabbert, Presiding Judge, Victor C. Howard, Judge and Cynthia L. Martin, Judge

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Attorneys:

Gregory L. Barnes, Jefferson City, MO, for respondent.

Jarrett A. Johnson, Kansas City, MO, for appellant.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**STATE OF MISSOURI,**

**RESPONDENT,**

**v.**

**UMAR MUHAMMAD,**

**APPELLANT.**

No. WD76966

Jackson County

Before Division One: Anthony Rex Gabbert, Presiding Judge, Victor C. Howard, Judge and Cynthia L. Martin, Judge

Umar Muhammad appeals his convictions of second-degree murder, first-degree assault, and two counts of armed criminal action following a jury trial. Muhammad claims that errors during closing argument and in the admission of evidence at trial made it less likely that the jury would accept his defense that he was not the shooter, an essential element of his crimes.

**Affirmed.**

**Division One holds:**

The trial court did not abuse its discretion in allowing the State to argue, during its rebuttal closing argument, that a key witness's trial testimony implicating another shooter had not been previously reported to the police. The State's rebuttal closing argument was made in response to Muhammad's closing argument, and the trial court acted within its discretion to permit it. Muhammad also failed to show that the factual inaccuracy of the State's rebuttal closing resulted in manifest injustice or a miscarriage of justice.

The trial court did not commit plain error when it did not declare a mistrial or give a curative instruction during closing argument when the State made a reference to what Muhammad was going to "say" to address whether he was present at the scene of the shooting. The State's closing argument was not a direct reference to Muhammad's failure to testify at trial but instead was a comment on the relative weakness of his case.

The trial court did not error when it permitted the State to discuss the meaning of "reasonable doubt" to the jury during its closing argument. The State's closing argument was a proper reference to "reasonable doubt" as defined in the jury instructions.

The trial court did not commit plain error when it did not declare a mistrial or give a curative instruction by allowing a police officer to testify that charges were not sought against two other suspects in the case. Muhammad failed to show that he was prejudiced by the testimony because he used the same testimony to bolster his defense that he was not the shooter. Even if the jury did infer that Muhammad committed the crimes because other suspects were not charged, jury instructions cured that negative inference.

Opinion by Cynthia L. Martin, Judge

October 27, 2015

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